Oleksa v. Department of Highway Safety & Motor Vehicles (Fla. 6th Cir. Ct. 2004)

Reported at 12 Fla. L. Weekly Supp. 195a. Pinellas County appellate division.

ALAN JOHN OLEKSA, Petitioner, v. DEPARTMENT OF HIGHWAY SAFETY AND MOTOR VEHICLES, Respondent. Circuit Court, 6th Judicial Circuit (Appellate) in and for Pinellas County. Case No. 04-0046AP88A. UCN522004AP000046XXXXCV. September 24, 2004. John A. Schaefer, Judge. Counsel: Michael P. Loberg, St. Petersburg. Carlos J. Raurell, Asst. General Counsel, Fla. Dept. of Highway Safety & Motor Vehicles, Miami.

ORDER GRANTING PETITION FOR WRIT OF CERTIORARI THIS CAUSE came before the Court on the Petition for Writ of Certiorari and the Response. Upon consideration of the same, the record and being otherwise fully advised, the Court finds that the Petition must be granted as set forth below.

The Petitioner, Alan John Oleksa (Oleksa), seeks review of the Final Order, entered May 4, 2004, in which the Respondent, Department of Highway Safety and Motor Vehicles (Department), denied Oleksa's "application for early reinstatement."1 In reviewing the Department's order, this Court must determine (1) whether procedural due process had been accorded, (2) whether the essential requirements of law had been observed, and (3) whether the administrative findings and judgment were supported by competent substantial evidence. See Vichich v. Department of Highway Safety and Motor Vehicles, 799 So.2d 1069, 1073 (Fla. 2d DCA 2001) (setting forth the standard of review for administrative action taken by the Department).

The record shows that Oleksa's driving privilege was permanently revoked on June 5, 1991, following his fourth conviction for DUI. On August 26, 1998, Oleksa met the requirements for a Class E restricted license for business or employment purposes only. Oleksa was required to participate in a Florida DUI Special Supervision Services (SSS) Program as a condition for maintaining his restricted license. On October 3, 2001, Oleksa was issued a Class E license that omitted the business or employment purposes only restriction. On June 18, 2003, the Department informed Oleksa of its error and instructed Oleksa to report to his local driver's license office within 15 days to obtain a restricted license. Oleksa complied with this requirement.

On November 7, 2003, the Department notified Oleksa that it was unable to verify his participation in an SSS Program.2 Following receipt of the Department's November 7th letter, Oleksa applied to the Pasco County DUI and Substance Abuse Program. Following its psychosocial evaluation, the Pasco SSS Program "terminated" Oleksa from its program, via letter dated March 29, 2004, for having consumed alcohol in February 2004. On April 6, 2004, Oleksa notified the Pasco SSS Program of his intent to appeal to a second SSS Program, DUI Counterattack, located in Hillsborough County. However, before his appeal was heard, the Department permanently revoked his license on April 9, 2004, which was upheld on May 4, 2004, leading to this appeal. The Court finds that the Department committed several procedural errors below that resulted in a violation of Oleksa's procedural due process rights. The primary error was the Department's failure to adhere to the Florida Administrative Code, Rule 15A-10.031, that sets forth the SSS appeal process. See

Armesto v. Weidner, 615 So.2d 707, 709 (Fla. 3d DCA 1992) (stating that an agency violates a person's due process rights if it ignores rules it promulgated which affect individual rights). Contrary to the Department's Response, the record shows that Oleksa did avail himself of the appeal process by timely notifying the Pasco SSS Program, within 10 days of notice of his termination, of his intent to appeal to a neighboring SSS Program, DUI Counterattack. Thereafter, DUI Counterattack was required to conduct an evaluation and provide Oleksa with an opportunity to present information in person. See Fla. Admin. Code, Rule 15A-10.031(5)(c). This evaluation never occurred. The Court finds that this procedural error was compounded by the failure of the Department's hearing officer to conduct a meaningful review of the Department's Final Order of permanent license revocation, which was entered prematurely.3 Indeed, according to the hearing officer's own statements, the hearing officer felt that he had no authority to review Oleksa's license revocation and had been directed to simply generate a denial letter. This hearing, standing alone, violated Oleksa's due process rights. See Department of Highway Safety and Motor Vehicles v. Pitts, 815 So.2d 738, 744 (Fla. 1st DCA 2002); see also Miami-Dade County v. Reyes, 772 So.2d 24, 29 (Fla. 3d DCA 2000) (finding that in an administrative proceeding, the opportunity to be heard must be meaningful). Accordingly, the Court finds that the Final Order must be quashed. Therefore, it is, ORDERED AND ADJUDGED that the Petition for Writ of Certiorari is granted and this cause is remanded to DUI Counterattack to conduct the appropriate appeal hearing.

_____ 1Oleksa did not apply for early reinstatement of his driver's license; rather, Oleksa applied to participate in a Special Supervision Services Program as a condition for a restricted license which had already been issued by the Department.

2Oleksa concedes that he discontinued participation in the SSS Program following the issuance of the unrestricted license and resumed drinking alcohol, approximately one drink per month.

3Rule 15A-10.31(5) sets forth the time periods applicable for notifying the Department once the appeal process has been initiated.

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